

**JLPH:**  
**Journal of Law, Politic**  
**and Humanities**<https://dinastires.org/JLPH>[dinasti.info@gmail.com](mailto:dinasti.info@gmail.com)

+62 811 7404 455

E-ISSN: 2962-2816  
P-ISSN: 2747-1985DOI: <https://doi.org/10.38035/jlph.v6i1>  
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## Protection of Customary Communities in Compensation for Losses on Common Land Objects for Public Interest (Study of Sorong District Court Decision Number: 120/Pdt.G/2018/PN.Son)

**Nasywa Awalia Putri<sup>1\*</sup>, Atik Winanti<sup>2</sup>**<sup>1</sup>Universitas Pembangunan Nasional “Veteran” Jakarta, Jakarta, Indonesia, [nasywawalia@gmail.com](mailto:nasywawalia@gmail.com)<sup>2</sup>Universitas Pembangunan Nasional “Veteran” Jakarta, Jakarta, Indonesia, [atikwinanti@upnvj.ac.id](mailto:atikwinanti@upnvj.ac.id)\*Corresponding Author: [2210611140@mahasiswa.upnvj.ac.id](mailto:2210611140@mahasiswa.upnvj.ac.id)<sup>1</sup>

**Abstract:** Customary law communities have a strong connection to natural resources and customary land as their main source of livelihood. This study was conducted to determine the protection of customary law communities on customary land for the public interest, as well as the judge's considerations in Decision No. 120/Pdt.G/2018/PN.Son regarding compensation for customary land. The researcher applied a normative juridical method through a Statute Approach and a Case Approach in analyzing the topic or issue. The results of the study show that protection is provided in the form of preventive and repressive actions by the government. Preventive efforts are carried out by forming Law No. 2 of 2012 and its derivative regulations to prevent disputes and guarantee the rights of customary law communities in land acquisition. Repressive efforts are pursued through the settlement of disputes in court by filing lawsuits in accordance with the provisions of the law. In Decision No. 120/Pdt.G/2018/PN.Son, the judge can use three stages, namely constatation, qualification, and constitution, to reach a good decision based on the principle of justice. Compensation in this decision was awarded as recognition and respect for the Marga Momo Indigenous Community. This writing is expected to demonstrate the importance of balancing development for the public interest and the protection of the rights of indigenous peoples with laws that favor justice.

**Keyword:** Compensation, Land Acquisition, Indigenous Peoples

### INTRODUCTION

Land as the foundation of life in every human activity forms a close bond between humans and the land (Happy, 2020: 108-119). Land plays an important role in the lives of Indonesian people, as stipulated in the Constitution of the Republic of Indonesia. The 1945 Constitution directs the use of land for the welfare of individuals. In accordance with Article 33 paragraph (3) of the 1945 Constitution, the state is given the authority to manage land, water, and all natural resources contained therein, with the aim of utilizing them for the welfare of the people (1945 Constitution). In expansion to the 1945 Constitution, other composed controls with respect to land are stipulated in UUPA. With these regulations, it is legitimately clear that land is portion of the earth's surface that's recognized and utilized to attain the welfare of the

individuals. In arrange to guarantee the well-being of the populace, the government needs land to carry out national development projects within the open intrigued (I Gusti, et.al., 2023).

Framework improvement certainly requires a adequately expansive range, which suggests that the government does not however have the satisfactory capacity to fulfill the accessibility of land. Hence, the government can obtain land based on the arrangements of Law No. 2 of 2012, hereinafter alluded to as the Land Acquirement Law. Land acquisition is carried out through the discharge of rights by the community, whereby the government employments land possessed by indigenous community groups as a implies to carry out improvement exercises within the open intrigued (M. Arba., 2019: 25). Standard land is frequently utilized as a essential source for the open great when supporting framework advancement through land procurement (Aquina, et.al., 2023).

Customary land is defined as land managed by customary law communities, and has customary rights covering the land and various natural resources within the community's jurisdiction (Abdul, et.al., 2023). Customary land is not only used for infrastructure development but also for land acquisition in plantation planning as regulated in Law No. 39 of 2014, hereinafter referred to as the Plantation Law. Land acquisition is not only aimed at improving welfare, but also at promoting prosperity for the nation, state, and society as a whole, as stipulated in Articles 3 of the Land Acquisition Law. Similarly, plantations are established to improve the welfare and prosperity of the people in accordance with the Articles 3 of the Plantation Law.

Based on the above explanation, the purpose of land acquisition and plantations is the same, namely for people's prosperity and well-being. However, there is a difference, namely that the Plantation Law stipulates that companies requiring land must obtain approval from the customary law community and remuneration (Law No. 39 of 2014). Meanwhile, the Land Acquisition Law stipulates that the customary law community is entitled to compensation (Law No. 2 of 2012). The difference in terminology between the Land Acquisition Law and the Plantation Law regarding compensation and remuneration indicates that there is a conflict of norms in the form of disharmony between the two laws on customary land. This appears that the state is still not fully consistent in recognizing, protecting, and respecting the rights of customary law communities. Furthermore, in the implementation of land acquisition, there is a conflict of interest between the public interest in providing welfare for the people and the interest in respecting and honoring the rights of customary law communities. This happens since compensation in land acquisition is often one of the reasons why land acquisition is not carried out as it should be due to the unfairness of the compensation provided (Miranda & Atik, 2021).

Decision No. 120/Pdt.G/2018/PN.Son is one piece of evidence of land acquisition issues caused by the provision of compensation to indigenous peoples. This decision is a case of civil liability caused by the government's failure to hold consultations and provide compensation in the construction of the Sorong-Manokwari section of the Trans-Papua Highway, resulting in the seizure of customary land without consent or compensation. This dispute is evidence that the government often ignores the rights of indigenous peoples to customary land. Recognition of customary law communities is often ignored, which certainly harms customary law communities.

Research conducted by Andi Firda, Kurniati, and Budiarti in 2022 shows that land acquisition is done through discussions to determine compensation. Similar to this study, the research also discusses compensation for land acquisition, but the difference lies in the object and perspective, the previous study reviewed compensation for privately owned land from the point of view of *siyasah syar'iyah*, whereas this study centers on stipend for compensation as a shape of protection for customary law communities. Investigate moreover conducted by Kornelius Ayub Romario Simanulang and Atik Winanti in 2023, standard land utilized for

government framework improvement was carried out through a component of discharge of rights by the specialists through the Land Organization. The closeness between these thinks about is that both center on advancement for the open intrigued on standard land, whereas the distinction is that the past think about emphasized the method for the discharge of rights, though this think about talks about lawful assurance for emolument for standard law communities based on Choice No. 120/Pdt.G/2018/PN.Son. A similar study by Krisna Angela and Anik Setyawati in 2023 shows that in land governance, the public interest is prioritized, so that indigenous communities are required to surrender their land in exchange for fair compensation. The similarity with this study is that both discuss compensation for customary land, while the difference is that the previous study focused on the principles of land acquisition, while this study focuses on the judge's considerations in Decision No. 120/Pdt.G/2018/PN.Son regarding recognition and compensation.

Based on the above explanation, further discussion and research are needed regarding the protection of customary law communities in compensation for customary land in development for public interests. This involves the judge's consideration in Decision No. 120/Pdt.G/2018/PN.Son on compensation for customary land and recognition of the existence of the Marga Momo Customary Law Community in the land acquisition process. This paper is expected to provide understanding and answers regarding protection in defending the rights of indigenous peoples.

## **METHOD**

This study applies a normative juridical method that focuses on statutory provisions, legal doctrine perspectives, and court decisions (M. Hendri., et.al., 2023). The researcher uses the Statute Approach and the Case Approach, which are carried out by analyzing an incident in a case to identify a social phenomenon with the aim of revealing what is in the case for further study. The data sources include primary, secondary, and tertiary reference legal materials collected through library research techniques. Library research techniques are a method of research that uses library data as its source (Sutrisno, 2002: 9). Qualitative data analysis techniques were used in this study on data that was not in the form of numbers and could be analyzed descriptively.

## **RESULTS AND DISCUSSION**

### **Protection of Indigenous Peoples in Obtaining Compensation for Customary Land for Public Interest**

Customary law communities are groups of people with historical roots who have lived in customary areas for generations (Allya, 2023). The strong bond between customary communities and their surrounding environment is formed within the framework of customary law, where they are considered members of a community formed from shared living spaces or kinship ties (Alosios, et.al., 2023). In their daily lives, customary law communities enjoy various rights, one of which is customary rights. Customary rights can be defined as the collective right to manage and use the land, territory, and natural resources within the boundaries of their own customary territory. The management of territories by customary law communities is regulated in Articles 2 paragraph (4) of UUPA. In addition, customary land within customary territories includes all elements within them, namely water, vegetation, and fauna, which form the basis of life and livelihood for customary law communities (Maria, 2009: 44).

Customary land is the main source of life for indigenous peoples (Sandra, 2005: 4). Destroying nature is tantamount to destroying life and damaging its breath. Indigenous peoples have the right to protection over their authority to use customary land, which serves as the basis for fulfilling indigenous peoples' rights and preserving the environment and natural resources

in indigenous territories. According to Phillipus M. Hadjon, legal protection for communities is a preventive and repressive measure taken by the government. Preventive measures are taken to prevent disputes, while repressive measures are taken to resolve disputes, including through the judicial process.

Establishing rules that serve as the foundation for the planning and execution of land acquisition is one preventive approach to preserve indigenous peoples. Law No. 2 of 2012 and its derivative regulations, Government Regulation No. 19 of 2021 and Presidential Regulation No. 71 of 2012, outline these rules. These laws were put in place to define rights and obligations grounded in democratic values, justice, and humanity. The government uses customary land as a means of acquiring land after indigenous groups use it for their livelihood. As a result, the government is required to compensate for both material and intangible losses (Krisna, 2022).

According to Articles 1 paragraph 10 of the Land Acquisition Law, compensation is defined as a form of fair and appropriate compensation to those who are entitled to it, a principle which aims to ensure transparency and fairness at every stage of land acquisition. As a preventive measure, the government is obliged to ensure that every implementation of customary land acquisition to support development for the benefit of the wider community is always accompanied by the provision of fair and equitable compensation. This action is a concrete form of protection for the rights of indigenous peoples so that they are not harmed by the development process, while also reflecting the state's responsibility to balance development interests with social justice for all citizens. Thus, the land acquisition process becomes more responsive to community dynamics and contributes positively to long-term national goals.

In expansion, based on Articles 40 of the Land Acquisition Law, the organizer is required to pay compensation straightforwardly to the recipients in arrange to anticipate manhandle or delays that may lead to doubt. Alluding to this articles, it has been naturally affirmed that standard law communities are among the parties entitled to get emolument for standard land. In the interim, Articles 41 paragraph (1) of the Land Acquisition Law emphasizes the government's commitment to hold meetings with standard law communities to decide recompense. The government must encourage break even with and significant exchange so that remuneration can be balanced to needs. The assention come to through the deliberation handle shapes the premise for deciding stipend for customary law communities, which is at that point recorded within the minutes based on Articles 37 paragraph (2) of the Land Acquisition Law. In this way, these directions not only as it were administer specialized methods but moreover empower land acquisition organizers to carry out their commitments and ensure the rights of customary law communities.

The implementation of deliberation isn't as it were controlled within the Land Acquisition Law, but too in Articles 72 paragraph (1) of Government Direction No. 19 of 2021. So also, Articles 68 of Presidential Direction No. 71 of 2012 stipulates that the sort or form of stipend will be decided in a consultation prepare including all entitled parties. Within the interview handle, recompense can be decided within the shape of cash, substitution of misplaced land, movement of settlements, Joint possession or other shapes agreed upon pursuant to Articles 74 of Presidential Declare No. 71 of 2012. From the existing controls, it can be concluded that interview could be a obligatory step earlier to the usage of emolument, as this prepare guarantees dynamic cooperation and reasonable understanding so that potential clashes can be maintained a strategic distance from. This approach not as it were reinforces the rights of innate people groups, but too bolsters the conservation of normal assets and neighborhood social information.

Unlike preventive measures, which establish regulations in the form of laws as guidelines and prevent disputes from arising, dispute resolution in the judicial system is carried out as a form of repressive action (Roki, et.al., 2021). Customary law communities that suffer material or immaterial losses of customary land due to development that is not in accordance

with the provisions of the law can file a lawsuit with the judicial institution, namely the local district court. However, before filing a lawsuit with the district court, it is advisable to discuss the case through mediation between the parties as an initial step in resolving the dispute. Initial handling through mediation can accelerate the achievement of an agreement without having to involve a lengthy judicial process.

If mediation fails to reach an agreement, the customary law community may proceed with the lawsuit. The government's efforts to follow up on civil lawsuits are a form of repressive action taken as a means of protection, as customary land is a vital component for the survival of customary law communities. These efforts are not only carried out to ensure respect and recognition of the rights of indigenous peoples, but also reflect the state's responsibility in building and strengthening the foundation between national development and the preservation of local culture.

### **Judge's Considerations in Decision Number 120/Pdt.G/2018/PN.Son regarding Compensation for Communal Land in the Construction of Public Interest**

Decision No. 120/Pdt.G/2018/PN.Son is a dispute related to land acquisition on customary land owned by the Marga Momo Customary Law Community. The Defendant has an interest in constructing a 22 km long and 16 m<sup>2</sup> wide Trans Papua Road, the implementation of which is subject to Law No. 2 of 2012 and Presidential Regulation No. 40 of 2013. The dispute arose because the Central Government carried out the construction, took, and used the customary land without going through a consultation process for compensation and without relinquishing rights to the customary land. Faced with this situation, the Marga Momo Customary Law Community made several attempts to defend and fight for their rights to compensation for the loss of customary land. These endeavors included introducing conventional obstructions at the Trans Papua Street development location, submitting a complaint to the Serve of Open Works and Lodging through their agents and lawyers, and submitted a request for mediation with the Defendants through the Special Autonomy Faction of the West Papua Provincial Legislative Council in Manokwari.

With respect to everything that happened amid the development of the Sorong-Manokwari segment of the Trans Papua Street, the Marga Momo Community filed a civil lawsuit related to land acquisition because they did not receive compensation based on the Land Acquisition Law. In this case, the judge considered Articles 5 of the UPPA, standard law is recognized as long because it does not struggle with the interface of the state. Articles 18 of the UPPA moreover clarifies that land rights can be disavowed for the open intrigued, which incorporates the interface of the country, the state, and the community, as long because it is went with by suitable stipend and is executed in understanding with statutory prerequisites. This can be the premise for the elaboration of the 2012 Land Acquisition No. 2 in giving recompense.

Reflecting on the above considerations, customary law communities' land rights have been constitutionally recognized. In Indonesian land law, there is a principle that regulates the affirmation of the communal rights of customary law communities, as stipulated in UUPA (Alicia, 2025). Every party, including the state, involved in land management or utilization is obliged to respect and recognize the existence of communal rights provided that the customary law community persists. and practices its customary legal system. If any party ignores and violates these communal rights, such actions are considered a deviation from the applicable legal norms because they contradict the basic principles of recognition and protection of customary law communities. In this case, the judge ruled that it was reasonable according to land law that the Trans Papua Road was built on land that was part of the customary land collectively managed by the Marga Momo Customary Law Community.



Development conforming to the Land Acquisition Law clearly stipulates the rights and obligations of both parties in land use. In this ruling, the judge considered that land must always be used in accordance with its intended purpose and provisions to ensure that all development activities do not violate the principles of sustainability and fairness, and if its use requires the relinquishment of rights, then fair compensation must be provided to those entitled to it. In the ruling, the judge considered the principle of fair compensation and did not only consider material losses but also immaterial losses to the affected traditional values that continues to be passed on across generations. The destruction of sacred sites in the customary territory of Marga Momo during the construction reflects immaterial losses to customary values that should have been a cultural heritage for future generations. With this, the judge considers that development should not only be for the sake of sustainable development but also to strengthen social and cultural harmony amid the dynamics of society.

Decision No. 120/Pdt.G/201/PN.Son, if the defendants need land for public development, they must provide fair and appropriate compensation to the Marga Momo Customary Law Community. Land acquisition should be carried out based on the principle of fairness, as determined as follows Articles 2 letter b of the Land Acquisition Law. The principle of fairness in the implementation of land acquisition is established to provide the Marga Momo Customary Law Community with the opportunities for a better life. Before providing compensation, the defendants must also hold consultations with the Marga Momo Customary Law Community in determining the compensation amount for land acquisition on Articles 37 of the Land Acquisition Law. However, after reviewing the facts of the case, the judge found that the defendants did not hold consultations and did not provide compensation to the Marga Momo Indigenous Community, which certainly caused injustice to the communal rights of the Marga Momo Community.

Decision No. 120/Pdt.G/2018/PN.Son, the judge used three stages in reaching a decision, namely constatation, qualification, and constitution. Constatation, qualification, and constitution are stages in reaching a good and correct decision by a judge with the aim of improving the quality of the decision (Achmad, 2015: 173). The stage of confirmation involves the judge determining whether an event is true or not by conducting an in-depth examination through the use of evidence. Decision No. 120/Pdt.G/2018/PN.Son did not contain written evidence of the customary land ownership of the Marga Momo Indigenous Community. However, based on Articles 1866 of the Civil Code, evidence is not only in the form of written evidence, but witnesses are also a form of valid evidence, so the judge explored the material truth from the witnesses presented at the trial.

The plaintiff's witnesses who appeared at the trial in this case testified under oath that they knew the boundaries of the customary land and also acknowledged that the disputed location was in the Miyah and Ayae districts, which are customary lands belonging to the Marga Momo Indigenous People. The witnesses also testified that the construction was carried out without any compensation being paid. Similarly, the witnesses for Defendant II and Defendant III were summoned and appeared in court to testify under oath that the witnesses, as employees of PT. Pulau Lemon (Defendant II), acknowledged the existence of the Trans Papua Road construction and acknowledged that Anggelius Momo was one of the customary land rights owners of the disputed land. Thus, the testimony of the witnesses was examined in depth by the judge in relation to this incident.

The judge's approach, which based the evidence on witness testimony, demonstrated recognition of the characteristics of customary rights in line with Article 18B paragraph (2) of the 1945 Constitution regarding the affirmation of the recognition of customary law communities. The judge's attitude towards the examination of witnesses is consistent with Constitutional Court Decision No. 35/PUU-X/2012, which affirms that customary land is not state land but is under the control of the indigenous community concerned. Thus, the judge did

not merely assess the evidence formally, but applied the principle of material truth to ensure that the rights of indigenous peoples continue to be recognized and protected in the process of land acquisition for public interests.

Next, at the qualification stage, during the trial, the judge examines the validity of the facts based on the laws that form part of substantive law (Hamzah, 2022). At the qualification stage, the judge compiles the appropriate or relevant laws for the events that have been found at the constatation stage (General Court, 2025). In Decision No. 120/Pdt.G/2018/PN.Son, the judge assessed the facts in the trial, and a local inspection of the location of the case revealed that the Trans Papua Road had indeed been built by the Defendants without a permit and without payment of compensation, which of course constituted a tort, pursuant to Articles 1365 of the Civil Code.. Because the actions of the Defendants constituted a tort, the judge considered the Constitution and the UUPA, so that the legal proceedings in this case were subject to the Land Acquisition Law in the mechanism of legal land acquisition and provided compensation for the customary land rights of the Marga Momo Indigenous Community.

The judge's assessment in the qualification stage of the Defendants' actions as unlawful acts shows that the judge does not place the government and private parties as legal subjects above the law. The judge's attitude reflects the principle of equality before the law, whereby every person or entity, including the state, is subject to the applicable law. By declaring that the Defendants had committed unlawful acts as referred to in Article 1365 of the Civil Code, the judge explicitly affirmed that the goal of development for the public interest cannot be used as a reason to ignore the procedure for providing compensation to indigenous peoples. Thus, the judge's decision in the qualification stage demonstrates an effort to balance the interests of the state in development with the protection of the communal rights of indigenous peoples as legitimate legal subjects.

Then, at the constituent stage, after referring to the laws and regulations, the judge imposes a sentence or awards justice to the parties involved in the case. In Decision No. 120/Pdt.G/PN.Son, the judge ruled and declared that the Defendants had committed unlawful acts and ordered the defendants to jointly and severally pay material damages for the land and all property rights attached to it as stipulated in Articles 40 of the Land Acquisition Law. The judge rendered a decision based on justice, not only considering the rights of the Marga Momo Customary Law Community but also taking into account that this development was carried out for the public interest, thereby declaring that it was fair and appropriate to sentence the defendants to pay compensation in the amount of 30 billion rupiah. In addition, the judge ruled that the 22 km stretch and 16 m<sup>2</sup> width from Kali Ayae to Kali Sisu constitute the customary land of the Marga Momo Indigenous Community.

Decision No. 120/Pdt.G/2018/PN.Son ruled that the defendants must provide compensation to the Marga Momo Customary Law Community, demonstrating that the court serves as an important bridge and protector of the rights of customary law communities, which are often vulnerable to neglect in agrarian conflicts. In this decision, the judge recognized customary rights in an effort to preserve them as long as the customary law community still exists. The recognition in this decision acknowledges the existence of the rights of the Marga Momo Customary Law Community. Decision No. 120/Pdt.G/2018/PN.Son is a form of recognition by the state of the existence of the rights of customary law communities, especially for indigenous communities that have not yet received administrative recognition.

Through Decision No. 120/Pdt.G/2018/PN.Son, the state has demonstrated that the traditional rights of the Marga Momo Customary Law Community are still recognized and protected, even though they have not yet been fully recorded in the national land administration system. Thus, the construction of the Sorong-Manokwari section of the Trans-Papua Road can create a balance in providing public welfare without neglecting the rights of customary law communities. The judge's decision in this case shows that the state, through the judicial

institution, plays a role in recognizing and protecting the customary rights of customary law communities.

## CONCLUSION

The protection of customary law communities in relation to communal land for public interests takes the form of preventive and repressive measures by the government. Preventive measures are taken to prevent disputes from arising, namely by establishing regulations stipulated in Law No. 2 of 2012 and several derivative regulations as the basis for the administration and implementation of land acquisition to guarantee the rights of customary law communities. Meanwhile, repressive measures are taken to handle and resolve disputes over land acquisition, namely through the settlement of disputes in court by filing a lawsuit to obtain rights as stipulated in the law.

Judge's consideration in Decision No. 120/Pdt.G/2018/PN.Son are Articles 5 of the UUPA regarding recognition of customary law communities and Articles 18 of the UUPA regarding fair compensation for public interests, which form the basis for the interpretation of Land Acquisition Regulation No. 2 of 2012 in providing compensation for customary land. There are three stages, to be specific constatation, qualification, and constitution, which are carried out by the judge in coming to a reasonable and fair choice in giving compensation for the Land Acquisition of the Marga Momo Standard Law Community. The compensation in this choice is given as acknowledgment of standard rights and regard for the Marga Momo Law Community. With this composing, it is trusted that the government, companies, and communities included will not as it were pay consideration to maintainable improvement but too proceed to pay consideration to the acknowledgment of the presence of standard law communities and give legitimate security as the rights of standard law communities as directed within the law.

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